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ABSTRACT

The nature and status of collective bargaining by faculty in colleges and universities in both the United States and Canada are reviewed. The growth patterns for collective negotiation in both countries and the causal factors for faculty unions are contrasted. The use of collective bargaining in higher education raises issues, including the determination of bargaining principles; determination of who should be included in the bargaining unit definition; the effect of the principle of exclusivity of bargaining rights on the agreement; and the resolution of bargaining impasses, grievance procedures and arbitration. Contents of contracts that are specifically related to higher education are discussed including governance, personnel policies, and academic provisions for faculty responsibilities and functions. (JMF)

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OIR-32

COLLECTIVE BARGAINING FOR ACADEMIC STAFF: AN OVERVIEW

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INTRODUCTION

Collective bargaining by academic staff in Higher Education is a recent phenomenon about which too little is known from experience to date to attempt any accurate forecast of its long-range nature and consequences. Its potential impact on the future governance of Higher Education is recognized by the many articles and books now being published and by the formation of such agencies as the National Center for the Study of Collective Bargaining in Higher Education at Bernard Baruch College, a part of the City University of New York (CUNY).

This study will look at various aspects of collective bargaining in the university setting and it is hoped that from it, the reader may gain some insight and perspective concerning this previously alien form of faculty/administration relationship. It will avoid making specific legal interpretations and will attempt to avoid making subjective opinions and using language which is the preserve of experts in the field of labor relations.

Canadian experience in academic staff collective bargaining is extremely limited and most of the available literature on this subject discusses the activity in the United States. However, many factors applicable to the American scene are mirrored in the Canadian and referencing them will assist in obtaining an understanding of collective bargaining in an academic setting.

GROWTH PATTERNS

In 1966 only two collective bargaining contracts covering academic staff were in operation in the United States; in 1973, such contracts numbered 156, of which only 40 were in 4-year institutions.[1] Sixty contracts were negotiated in 1972 but only 16 new contracts were signed

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[1]Compiled by the National Center for the Study of Collective Bargaining in Higher Education (Bernard Baruch College) and reported in The Chronicle of Higher Education, Vol. VIII, No. 10, November 26, 1973, p. 8.

in 1973, the first year to record a decrease since 1968.[2] However, it would be wrong at this time to make any inferences from this as to the trend of future activity. Legislation concerning collective bargaining in Higher Education varies in the United States so that the legal right to bargain collectively is not available to faculty in all institutions and this no doubt has some effect on the growth rate.

A 1969 survey undertaken by the Carnegie Commission on Higher Education reported that 41%[3] of the faculty respondents agreed strongly or with reservation with the assertion that "Collective bargaining by faculty members has no place in a college or university;" a similar survey conducted in the 1972-73 academic year revealed that support for the assertion had dropped to 34.1%.[4] However, even with the increased acceptability of the principle of collective bargaining, there has not been wholesale acceptance when the issue has been put to a vote at various institutions. Unionization has been rejected at such institutions as Syracuse University, Villanova University, Michigan State University and the University of Massachusetts - Amherst campus.

Canadian labor legislation does not appear to bar collective bargaining in institutions of higher learning in any jurisdictions and yet Canadian experience in this area has occurred only in the past few years. Contracts now exist at campuses of l'Université du Québec, Bathurst College (an affiliate of the University of Moncton) and Notre Dame University of Nelson, B. C. and in addition, faculty associations have recently been certified as bargaining units at the University of Manitoba, St. Mary's University (Halifax) and at l'Université de Sherbrooke. Furthermore, faculty members are now seeking certification at the University of British Columbia, l'Université Laval and at l'Université de Montréal.

At the Learned Societies Conference at Queen's University in 1973, the Canadian Union of Public Employees (CUPE) announced that it planned to investigate the possibility of a Canada-wide campaign to organize University professors.[5] A symposium on "Collective Bargaining in the Universities and Colleges of Canada" was held at

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[2]Ref. 18.

[3]Ref. 6, p. 40.

[4]Ref. 3, p. 30.

[5]Ref. 19.

Banff in November of 1973 and was attended by over 100 professors. It would appear from these observations that Canadian universities may expect increased activity and interest in collective bargaining on their campuses in the foreseeable future.

It is interesting to note that the Canadian experience shows a "scattered" pattern; it is not spreading like a wave moving east to west and therefore its next occurrence is not predictable. The American experience at four-year institutions, however, shows a "domino effect," with a considerable part of the activity occurring within a hundred-mile radius of New York City[6] and spreading out to institutions in adjacent states.

CAUSAL FACTORS

Adell and Carter identify the following as factors leading academic staff towards collective bargaining: uncertainty of the job market in the 1970's, job security and insecurity, increases in term appointments, possibilities of lay-offs, terminations for redundancy, effects of budget restrictions, increasing control of university affairs by governments, remoteness of administrators due to size of institutions and growth of collective bargaining in the public service sectors.

The factors identified by Adell and Carter are also applicable to the American scene. Carr and VanEyck also point out that dissatisfaction and tension may result fron an "Old Guard, Young Turk" division within faculty members. Leveling enrolments have caused a leveling-off in faculty numbers in some institutions, resulting in a "clogging" in the higher academic ranks and fostering dissatisfaction in the junior ranks. The "Old Guard" may be perceived as the "advantaged"--holding tenure and drawing higher salaries. Unionization has a tendency to "level" which works in favor of the lower or disadvantaged staff.

Faculty uncertainty over the student role in university governance is another important factor which should be mentioned. With increased student participation, faculty are apprehensive about student involvement in decisions concerning faculty evaluations, appointments, promotions, tenure, etc.

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[6]Ref. 6, p. 61.

Some or all of these factors may be bringing feelings of dissatisfaction amongst academic staff at each university. No attempt will be made to rank them in order of importance nor in order of degree found on any campus, as similar factors existing at various universities may effect totally different degrees of faculty reaction. The factors describe the current climate prevailing in most institutions of higher learning. The conditions exist and there does not appear to be any immediate remedy available to university administrators to minimize the dissatisfaction which the factors may promote.

Carr and VanEyck point out that three basic conditions usually exist before a group decides to engage in collective bargaining: the law must provide the group with the rights to bargain with an employer; the group must be substantially dissatisfied with the existing conditions of employment; and there must be someone actively working to persuade members to support a union or an association to work on the group's collective behalf to obtain more satisfying terms. The degree to which these conditions can be found in the various Universities of Ontario may provide some insight with which to assess whether a move towards collective bargaining by academic staff in Ontario may occur in the near future.

PROBLEMS AND FEARS ENCOUNTERED IN COLLECTIVE BARGAINING

Although collective bargaining may resolve some problems with respect to working conditions dissatisfaction, it also raises a number of problems and concerns for both parties involved in collective bargaining in Higher Education.

Determination of bargaining principals

In an industrial setting, management and employees are clearly identifiable and each are able to commit the groups they represent to the terms of the accepted, negotiated contract. Public institutions of Higher Education, both in Canada and the United States, find themselves in a different position than the industrial concern in that they are dependent on governments to provide the funds for operations. If the bargaining parties become the administrators of each university and their respective faculty members, it is possible that contracts, agreed

to by individual universities and their academic staff, may not be fundable at the level of support provided by the legislatures. Arbitration awards might be unable to be implemented without detrimentally affecting the teaching function, if purse strings are controlled by elected officials.

Alternatives to the individual campus bargaining arrangement may be to have the government deal directly with the employees concerning monetary matters and to have the individual university administrators bargain with the employee unit on working conditions or to have sequential multiple adversary relationships whereby government and employers negotiate, then employers and employees.

There are two major concerns to be considered with respect to the determination of the bargaining parties: erosion of institutional autonomy, if governments become more deeply involved in the process and the creation of a "that's your problem" syndrome where the responsibilities of the collective bargaining process are divided between legislature, civil service and campus administrators.[7]

Having raised the question of bargaining party determination, we can offer no suggestions by which one might influence the final determination.

Determination of bargaining unit

Although an apparently simple question when first considered, the question of which employees should or should not be included in the employee bargaining unit definition becomes a very important and difficult question to answer.

The Ontario Labour Relations Act does not deem members of the architectural, dental, land surveying, legal or medical professions who are entitled to practice in Ontario and are employed in a professional capacity to be "employees." It further excludes those persons who exercise managerial authority/functions or are employed in confidential capacities in matters related to labour relations. Professional Engineers may be deemed to be an appropriate unit by themselves but if a majority desire, they may be included in another unit. In the end, the Ontario Labour Relations Board "shall determine the appropriate unit."[8]

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[7]Ref. 8, pp. 294-296.

[8]Ref. 15, Sect. 6(1).

Experience in group definition has shown that no universal rules appear to exist to determine the nature of an "appropriate" bargaining unit in academic collective bargaining. The Notre Dame University of Nelson contract covers teaching faculty, professional librarians and senior administrators (departmental chairmen, directors); the University of Manitoba consists of all full-time professors and professional librarians but excludes all deans and academic staff above the rank of dean, sessional appointments, directors of schools and certain full-time professors and heads in the Faculty of Medicine.[9] A question still exists at Manitoba as to whether the certified unit will include professional faculty (e.g., architects, professional engineers, etc.) and the Manitoba Labour Board will be holding a vote on this matter. Manitoba labor legislation allows professionals to be excluded from a unit if a majority wish it. The collective agreement at l'Université du Québec à Montréal includes full and part-time (those who perform the majority of the duties of a full-time faculty) academic staff, department chairmen, and vice-deans.

American experience has shown a tendency to define the "employee unit" by identifying those who share a "community of interest,"[10] but with inconsistent application. In this way, many units were defined which include full-time and "regular part-time" teaching staff. In some cases, the National Labor Relations Board (NLRB) has created a single unit of "all professionals," whether teaching or nonteaching. As a result, bargaining units at CUNY and the State University of New York (SUNY) include librarians, data processing personnel, registrars, student counsellors, health officers and placement office directors.[11] At St. John's University and at Fordham University, the N. L. R. B. held that the law school faculties were distinct groups of employees and excluded them from the units covering the balance of the academic staff at these institutions. However, the Michigan Employment Relations Commission found that the medical faculty should not be separated at Wayne State University because it would tend to fragmentize the "teaching faculty unit."[12]

In summary the following questions may be posed for detailed

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[9]Ref. 20.

[10]Ref. 9.

[11]Ref. 6, pp. 88-94.

[12]Ref. 6, pp. 98-99.

consideration:

1) Should part-time academic staff be excluded from the academic bargaining unit?

2) Are departmental chairmen part of "the administration" and therefore should they be excluded from the unit?

3) Should non-teaching professionals be included in the unit?

4) Should tenured and non-tenured academic staff be included in the same unit?

5) Should academic staff in the "professions" (e.g., medicine, engineering) be excluded from the unit and should they be included in their own individual units?

6) Is fragmentation of academic staff into separate units desirable from the university administration's point of view? From the individual faculty member's point of view?

> "...the unit determination stage is a most critical one and will substantially affect the number of employee organizations, the organizational unity of a multi-campus university system, and the co-operative effort between instructional faculty and professional support staff in complex universities."[13]

Effect of principle of exclusivity of bargaining rights

One of the most important principles in collective bargaining is the recognition by the employer that the certified bargaining agent is the exclusive bargaining agent for the employees and no one else is allowed to engage in bargaining on behalf of any of the employees. This recognition may raise a number of serious questions with regard to the status of Senates and individual rights, depending on the scope of issues covered by and the terms negotiated in the bargaining agreement.

If the scope of the bargaining agreement broadens beyond primarily economic issues to include matters normally handled by Senates, a

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[13]Ref. 9.

conflict of dual representation may occur.[14] Would the faculty members on the Senates in such cases be considered as representing the bargaining unit and, if so, should the University administrators continue to negotiate with them in contravention of the principle of "exclusivity," rather than with the representatives stipulated in the bargaining agreement? Furthermore, some senior faculty representatives in the Senates may be placed into new roles as a result of possible exclusion from the designated bargaining unit, thereby changing the general nature of the Senate. A real threat may exist to the continued survival of the Senates as presently constituted if collective bargaining is implemented in the university setting.

Individual professors exercise a large measure of influence in institutional policies under the present system of collegiality. With the introduction of collective bargaining, the traditional concept of "shared power" under collegiality may disappear as the bargaining agreement develops into a code of work rules. Participation of faculty on various committees may be directed by the terms of the collective agreement and may limit the involvement of faculty members in some institutional decisions. Currently, faculty organizations and procedures are usually designed to provide individual faculty members with the right to have their full say and to express their own positions on important educational and institutional issues. If collective bargaining is embraced, the principle of "exclusivity" of the bargaining agent may minimize his rights to effectively express his personal position on issues under discussion between the bargaining agent and the university administrators.

"Exclusivity" raises further questions with respect to the traditional relationships of universities and their faculty members with campus Faculty Associations and such organizations as the American Association of University Professors (A. A. U. P.)[15] and the Canadian Association of University Teachers (C.A. U. T.). If the local Faculty Association does not become the certified bargaining agent, is there a purpose for the Association and for C. A. U. T., and if so, what are their roles and can they be recognized in the bargaining agreement? Experience to date does not provide answers.

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[14]Ref. 13.

[15]Ref. 5., p. 95.

Resolution of bargaining impasses

While bargaining agreements dispose of strikes and lock-outs as weapons available to the bargaining parties during the life of the agreements, they introduce the elements of grievance procedures and arbitration as solutions to disagreements in interpretation and application of contract terms and to impasses in general negotiations. At first flush, this seems desirable for all parties -the employer gets a guarantee of uninterrupted operations and the employee gets a reasonably prompt resolution of complaints through the grievance procedure. However, this issue should be looked at more closely.

As Carr and VanEyck point out, labor laws have not been written which are specifically geared to the organization found in Higher Education. It is therefore possible that judges or arbitrators who are called upon to make final determinations and rulings on disputes may do so based on experience in the industrial setting. They cannot be counted on to bring the necessary understanding of educational institutions and academic ways to their decisions concerning such areas as faculty appointments, promotions and tenure-granting. Although the bargaining agreements may provide for internal peer control of these functions, outside arbitrators usually control the final determination. A precise and detailed wording of critical points in a bargaining agreement is crucial to both parties to the agreement, for the guidance of arbitrators who may be called in.

A genuine fear which is expressed is that the real power of admission to the professoriate may pass from the academics to "outside" labor arbitrators. Rulings of arbitrators and labor relations boards may have significant impact on the future of university management. For example, a three-man arbitration board, chaired by Senator H. Carl Goldenberg, is being asked to rule on a contract binding the Windsor Separate School Board to maintain existing average class sizes of 32 pupils and to set a ceiling of 35 per class for Grades 1 to 8.[16] It is not too difficult to foresee faculty work-loads and other issues being decided in a similar manner.

Other considerations

If the institution of collective bargaining is being contemplated, a number of additional points should be considered:

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[16] The Globe and Mail, May 9, 1974, p. 2.

i) Collective bargaining has tended to exert a "leveling" effect within the bargaining unit. Excellence may not be able to be rewarded financially in salary merit increases in the same manner as it can outside a bargaining agreement. Faculty related to "professional" groups want to maintain pay scales within their professions. This may require salary or load differentials which may not be generally acceptable to other faculty members.[17]

ii) Unionization will centralize major decision-making, make it overt and not hidden in bureaucracy. Faculty will still have a say in the process but it may occur only yearly and across a bargaining table. Collective bargaining may introduce "rigidity" into university decision-making, formalize previously unwritten practices in legalistic terms within bargaining agreements and possibly hinder the pursuit of excellence and remove the flexibility required for educational experimentation.

iii) "Collective bargaining is a process, adversary in nature, which is designed to resolve conflict arising in an employment relationship."[18] This adversarial nature, both at the bargaining table and in the daily administration of the bargaining agreement, may create tensions which may severely damage essential patterns of trust and cooperation which have been established to some degree under the traditional concept of collegiality. We use the word "may" frequently for, although the bargaining process is adversarial, the parties need not be adversaries.

CONTRACT CONTENTS

Contracts covering collective bargaining between academic staff and their employers normally follow the pattern of current industrial agreements as to form and general provisions. They contain statements of intent, definitions of terminology used in the contract, procedures for union-dues check-off, recognition of the union as the exclusive bargaining agent, salary schedules, and the specific details covering the issues negotiated. Some of these issues are specifically related to higher education and require further comment.

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[17] Ref. 13.

[18] Ref. 9.

Governance

A survey of 101 contracts by Goodwin and Andes[19] has found that the existing governing organizations of the university, such as faculty Senates, have been left to continue to operate so long as any action which they take does not rescind or modify any provisions of the contract. Often contracts detail the entire governing organization of the institutions, establish committees and identify their type, duties, membership and membership selection procedures. Contracts may outline procedures for the selection of deans and departmental chairmen and outline the duties of the chairmen.

The agreement with l'Université du Québec à Montréal provides for three faculty members to be on the Conseil d'Administration and six on la Commission des Etudes.[20] The Notre Dame agreement provides for continued, undiminished participation in the General Faculty Council and the Academic Committee.

Personnel policies

Provisions are included in the bargaining contracts which outline the procedures for faculty appointments, for non-reappointment of non-tenured faculty and for dismissal of tenured faculty. The contracts usually contain procedures outlining steps in granting promotions and tenure, define the procedures by which evaluations of faculty members are to be conducted and set out the grievance procedures to which the faculty members have recourse if they feel they have been unfairly treated.

Steps for faculty hiring are set out in Articles 8 and 9 of l'Université du Québec à Montréal agreement. The contract sets a maximum probationary period of four years for all new academic appointments and provides for recourse to grievance procedures if the initial probationary period expires and renewal is not made. Conditions for tenure-granting are stated and the agreement outlines the procedures for the evaluation of academic staff. The agreement provides job security for tenured staff by providing mandatory acceptance of reassignment and retraining for all tenured staff under age 55 when circumstances require that the faculty complement in a

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[19] Ref. 2.

[20] Ref. 17, Article 4.

department be reduced. Refusal of reassignment or retraining allows dismissal by the University but provides the faculty member with the right to place his case in arbitration.

Article Ten of the Notre Dame agreement provides that all full-time appointments shall be hired for a one year term, renewable for an additional one year term if their performance is satisfactory, with tenure granted upon satisfactory completion of the second year. Each full-time employee will be reviewed annually by a Faculty Evaluation Committee (FEC) composed of the Vice-President (Academic), Dean of Academic Studies, three members of the General Faculty Council and one student appointed by the Student Union. The FEC will make recommendations to the Board of Governors on reappointments, rank, tenure, dismissal, promotions, accelerated salary increments, leaves-of-absence, and sabbatical leaves. A bargaining unit member who disagrees with the recommendation of the FEC as it affects himself has final appeal to a three-member Evaluation Appeal Committee consisting of one nominee each selected by the employee and by the employer with the third member being a mutual selection by the two nominees or an appointee by the Minister of Labour.

Academic provisions

Most agreements contain terms which spell out the procedures and responsibilities for determining class size, defining teaching loads and identifying the responsibilities of faculty members.

Article 10 of l'Université agreement defines the academic function as teaching, research, student counselling, academic administration and public service/professional service related to the duties of the faculty at the University. It sets a limit on the teaching assignments to be borne by a faculty member in any one year.

Article Eight of the Notre Dame agreement provides for discussion of draft teaching schedules with each employee prior to implementation. Article Nine acknowledges the academic staff duties to be the same as those defined in l'Université agreement and regulates each academic's teaching duties to four full courses or equivalent per year.

ALTERNATIVE TO FORMAL COLLECTIVE BARGAINING

An alternative to formal collective bargaining may be the formation of a faculty negotiating team to bargain over salaries and working conditions and which is voluntarily recognized by the administration. Under this arrangement, the academic community retain complete control of their traditional functions and direct outside interferences are minimized. The University of Scranton followed this course and, in February 1971, negotiated a three-year agreement covering salary scales and teaching loads.

However, voluntary recognition of an uncertified bargaining unit poses potential problems for both the employer and the recognized unit. The continued existence of such an alternative outside the confines of labor laws cannot be guaranteed. A relatively small core of dissatisfied members could press for formal certification of a bargaining agent and the informal arrangement could be ended. If the existing unit is not well defined by both parties, positions could be included or excluded by a Labor Relations Board in an application for certification proceedings, contrary to the desires of either, or possibly both of the parties. Involvement by a university in providing assistance to an uncertified group could result in denial of certification under existing labor legislation. It is nonetheless worthy of consideration by administration and faculty as an alternative to formal collective bargaining with its rigid, legal conditions and responsibilities.

SUMMARY

The reader has been presented with a general overview of the nature and status of collective bargaining by faculty in colleges and universities to this point of time. It shall be his responsibility to assess its potential benefits or drawbacks as it might apply to conditions existing at his institution. In forming any judgements, the following admonitions should be considered.

> "The one clear danger posed by the movement toward faculty collective bargaining is that it may quickly come to shape and control the labor-management relationship in Higher Education as completely as it does in industry."[21]

[21] Ref. 2, p. 293.

"...,a heavy responsibility rests on faculty members, university administrations and governments to ensure that any new bargaining machinery is so designed and operated as not to impair the educational performance and the essential independence of the university."[22]

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[22]Ref. 1, p. 95.

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